

major markets.”<sup>29</sup> If the freeze is lifted and if Petitioner is ultimately granted a construction permit for the new station, Petitioner intends to affiliate with The WB. Petitioner has an obvious interest, therefore, both as an existing and future affiliate of The WB, in helping the network to succeed. Indeed, even if the license is ultimately awarded to another entity, the public is served by the creation of a new station available for affiliation. Petitioner is well aware that the single most difficult impediment for The WB has been finding enough television stations with which it can affiliate to gain the requisite national reach.<sup>30</sup> At best, The WB has been the fifth, and often the sixth, entrant in those top 100 markets in which it has an affiliate. Coupled with the fact that almost two-thirds of all television markets have only four commercial television stations, the ability of any new network to find affiliates is severely limited.

Lifting the freeze in communities in which The WB has no primary, full power affiliate will afford the applicant entities the opportunity to build new stations with which The WB can develop a primary affiliation. There is no guarantee, of course, that Petitioner's application will

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<sup>29</sup> *Television Broadcasters, Inc.*, 4 RR 2d 119, 123 (1965) (Commission granted a short-spacing waiver to an ABC affiliate based largely upon its finding that the station had inferior facilities compared to those available to the other national networks in the market, which resulted in a “serious competitive imbalance”), *recon. granted in part on other grounds*, 5 RR 2d 155 (1965). *See also Peninsula Broadcasting Corporation*, 3 RR 2d 243 (1964) (same); *New Orleans Television Corp.*, 23 RR 1113 (1962) (short-spacing waiver granted for the purpose of assuring the existence of a third truly competitive station in the market, thereby making available competitive facilities to the networks).

<sup>30</sup> The WB has, in a variety of proceedings, explained to the Commission that its primary challenge in establishing itself as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.*, Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (Oct. 30, 1995; Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (Aug. 22, 1994). UPN has expressed similar difficulties in its own efforts to establish a nationwide presence. *See* Comments of the United Paramount Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (Oct. 30, 1995).

be granted or that the station will ultimately affiliate with The WB. But whether it is The WB or some other new network that gains an affiliate and thereby strengthens its efforts to obtain a nationwide reach, the public benefits. Quite simply, therefore, a grant of this waiver request will further the significant public interest objective of encouraging the emergence of a new national network or networks.

## **2. Grant Of The Requested Waiver Will In Turn Enhance Diversity And Competition In The Local Marketplace**

Lifting the freeze will also enure to the benefit of local viewers.<sup>31</sup> In addition to the reasons unique to this community,<sup>32</sup> the Commission has long recognized that network economies of scale enhance the type of programming available to viewers by fostering news gathering, editorializing and public affairs programming.<sup>33</sup> As the Commission has noted, “efficiencies that might flow from the stations forming the nucleus of a new network” would “permit the production of new and diverse, including locally produced, programming.”<sup>34</sup>

The emergence of the Fox network is illustrative. As the Commission has observed:

The emergence of Fox has greatly enhanced source diversity by offering viewers alternative, network-quality prime time programming. It has also bolstered outlet

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<sup>31</sup> Network/Affiliate NPRM, 10 FCC Rcd at 11955-56 (“Furtherance of diversity and competition remains the cornerstone of Commission regulation.”).

<sup>32</sup> See *supra* at section II. A.

<sup>33</sup> *Multiple Ownership*, 10 FCC 2d at 45.

<sup>34</sup> *Review of the Commission’s Regulations Governing Television Broadcasting*, 7 FCC Rcd 4111, 4113 (1992).

diversity by providing a solid financial base to Fox's affiliates, many of which were formerly marginal independent UHF stations.<sup>35</sup>

Simply stated, television viewers have benefited from the advent of a new network in a number of ways beyond the choice of more network programs. Network programming, after all, is only on the air for a portion of the broadcast day, particularly for new networks. For periods when the stations receive no network feed, the enhanced financial viability of these stations has permitted them to buy higher cost (and higher quality) syndicated programming. In addition, many of the stations have been able to add their own locally produced news and public affairs shows. For example, numerous Fox affiliates now have a 10 p.m. local newscast.<sup>36</sup>

There is no reason to think that four -- or five -- network affiliates in a market is "enough." The public benefits with each additional source of diversity and competition. Lifting the freeze will achieve these twin goals.

### **3. Grant Of The Requested Waiver Is Supported By The WB's Goal Of Increasing The Amount of Educational And Informational Programming Available To Children Nationwide**

Even while the Commission is contemplating regulating the amount of educational and informational children's programming that a licensee must air, it can do nothing, of course, to regulate the quality of such programming. The reality is that the newest, smallest stations in a community already have the worst chance of obtaining quality educational programming at an affordable price -- and this is unlikely to change. To ensure that *all* affiliates of The WB,

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<sup>35</sup> *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282, 3333 (1993); *modified*, 8 FCC Rcd 6736 (1993); *modified*, 10 FCC Rcd 12165 (1995).

<sup>36</sup> Approximately 40 percent of Fox affiliates now broadcast a local evening news program. T.L. Stanley, Michael Freeman, "There's No Excuse," *Broadcasting & Cable*, June 10, 1996 at 5.

including any newly built stations that could result from these series of applications, have high quality, educational children's programming, The WB will add to its network feed a 30-minute educational children's program each weekday commencing in September 1997.<sup>37</sup> This production will continue irrespective of whether the FCC adopts a quantitative rule with respect to educational children's programming.

In addition, The WB will continue to produce and air top quality educational and informational interstitials like the "Crazy Careers" segments that it already airs. The WB also will continue to include, in its line-up of entertainment children's programming, shows that incorporate morals and lessons and include segments that have education as a significant purpose.<sup>38</sup> Finally, The WB will continue to air one hour of prime time family programming, which is specifically designed to include programs that the entire family can watch together. The WB has committed the 8-9 p.m. hour for this purpose, and will continue to do so.

In short, lifting the freeze could help bring The WB's network programming -- including The WB's children's programming -- to this community. This, in turn, would increase the amount of programming specifically designed to meet the educational and informational needs of children, as well as family programming, available to viewers. Lifting the freeze is therefore in the public interest for this reason as well.

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<sup>37</sup> This program is in development with Norman Lear.

<sup>38</sup> Storylines for *Animaniacs* and *Pinky and The Brain*, for example, are often adapted from classical literature or history. *Animaniacs* segments have also portrayed life during different historical periods. In other segments, the *Animaniacs* and *Pinky and The Brain* characters have provided basic introductions to modern scientific principals.

### III. GRANT OF THE REQUESTED WAIVER IS NECESSARY AS SOON AS POSSIBLE

A freeze order, by its nature, causes delay. Newly emerging networks, however, are too fragile to be able to afford delay

The WB has been on the air for only one and a half years, and has a long, treacherous path to travel before earning a profit. It has been widely reported that an initial investment of approximately \$300 million was necessary for the launch of The WB and that first year losses for the network were in the \$50-\$75 million range.<sup>39</sup> The WB is not expected to break even for four years.<sup>40</sup> The WB, like any new network, is thus starting its network life in the red.

The establishment of a new network as a profitable entity will depend in large measure upon the life blood of any national network -- its primary affiliates. Accordingly, if The WB is to survive, let alone flourish, it must be allowed to compete for affiliates *now* in communities in which it has none. The freeze works directly against the emergence of this new network competitor. Expeditious action on the part of the Commission is needed, therefore, to allow the construction of new television stations that are potential WB affiliates. Granting the freeze waiver is a necessary step to achieving this end -- both in general and for Petitioner in particular.

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<sup>39</sup> David Tobenkin, *New Players Get Ready to Roll: UPN and WB Prepare to Take Their Shots*, *Broadcasting & Cable*, Jan. 2, 1995, at 30 ("New Players"). The WB's losses for the first quarter of 1996 were \$24 million. Michael Katz, *Time Warner Reports First-Quarter Losses*, *Broadcasting & Cable*, April 22, 1996 at 55.

<sup>40</sup> *New Players* at 30.

## **CONCLUSION**

For all of the foregoing reasons, Petitioner asks the Commission to grant a waiver of its Freeze Order. Indeed, in order to make opportunities available for these new potential affiliates at the earliest possible time, Petitioner also respectfully requests that the Commission rule on this petition expeditiously.